

~~DOCKET FILE COPY ORIGINAL~~ Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of) WT Docket No. 07-109
)
FRANK C. RICHARDS) FCC File No. 0002666016
)
Application for New License in the Amateur)
Radio Service)

HEARING DESIGNATION ORDER

Adopted: May 23, 2007

Released: May 24, 2007

By Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this *Hearing Designation Order*, we commence a hearing proceeding before a Commission Administrative Law Judge ("ALJ") to determine whether the above-captioned application filed by Frank C. Richards ("Frank Richards (NY)") for a new Amateur Radio Service license should be granted. As discussed below, prior to filing the above-captioned application, Frank Richards (NY) filed an application seeking to modify the license of Frank C. Richards ("Frank Richards (FL)") for Amateur Radio Service Advanced Class License KB4VU by, *inter alia*, changing the licensee address from Florida to New York.¹ Subsequently, Frank Richards (FL) informed the Commission that he continued to reside in Florida, and had never lived in New York or requested that the address associated with his license be changed. The record before us suggests that Frank Richards (NY) intentionally submitted a fraudulent application to obtain the privileges associated with Call Sign KB4VU. Based on the information before us, we believe that the actions of Frank Richards (NY) raise a substantial and material question of fact as to whether he possesses the requisite character qualifications to be a Commission licensee. Because we are unable to make a determination on the record currently before us that grant of the application of Frank Richards (NY) for a new amateur license would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by Section 309(e) of the Communications Act of 1934, as amended (the Act).²

II. BACKGROUND

2. Frank Richards (FL) renewed his license for Amateur Radio Service Advanced Class License KB4VU in 1994.³ The application did not seek to change any of the licensee information.

3. On November 28, 1995, Frank Richards (NY) submitted an application to renew the license for Amateur Radio Service Advanced Class License KB4VU; change the mailing address from Fort Myers, Florida, to Plattsburgh, New York; and change the call sign to the next systematically assigned call sign.⁴ The application stated that the prior license had been "misplace[d] in moving."⁵ The

¹ See FCC File No. 9609179953 (filed Nov. 28, 1995).

² 47 U.S.C. § 309(e).

³ See FCC File No. 9406283119 (filed Apr. 22, 1994).

⁴ See FCC File No. 9609179953.

⁵ *Id.*

application was returned on January 26, 1996 because it was missing a signature and because the date of birth on the application (February 19, 1948) did not match the birth date in the Commission's licensing records associated with Amateur Radio Service Advanced Class License KB4VU (July 27, 1948). After Frank Richards (NY) resubmitted the application with a signature and a copy of his birth certificate indicating that he was born on February 19, 1948, the application was granted on September 17, 1996 under Call Sign KG2IJ. Frank Richards (NY) later modified the license to change the address from Plattsburgh, New York to Mooers, New York.⁶

4. Subsequently, Frank Richards (FL) contacted the Commission's Enforcement Bureau (EB). He indicated that he had not changed his Florida address, and had not requested any modification of his license for Amateur Radio Service Advanced Class License KB4VU.⁷

5. On February 27, 2004, EB sent Frank Richards (NY) a letter stating that the facts set forth above raised questions about the apparent abuse of the licensing system, and directing him to provide documentation of his former address(es) in Florida and the date he moved to New York, and to list all Amateur license classes he had held.⁸ His response was due March 20, 2004.⁹ When no response was received, EB sent a second letter on April 21, 2004.¹⁰ On June 23, 2004, Frank Richards (NY) submitted the license for Amateur Radio Service Advanced Class License KG2IJ for cancellation.¹¹ The license was canceled June 28, 2004. On July 6, 2004, EB notified Frank Richards (NY) that no further enforcement action was contemplated at that time, but that the circumstances surrounding the facts set forth above would have to be resolved if he ever applied for an Amateur license in the future.¹²

6. On March 11, 2006, Frank Richards (NY) took the Technician Class examination, and on June 28, 2006 filed the above-captioned application for a Technician Class license.¹³ EB notified him on July 14, 2006 that, after review of the information contained in a letter he submitted to EB prior to filing the application,¹⁴ EB was unable to make a determination of whether the application should be granted.¹⁵

III. DISCUSSION

7. The Commission and the courts have recognized that "[t]he FCC relies heavily on the

⁶ See FCC File No. 0001325209 (filed May 27, 2003).

⁷ See e-mails dated November 24, 2003 from Julie Richards to Riley Hollingsworth.

⁸ See Letter dated February 27, 2004 from W. Riley Hollingsworth, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau to Frank C. Richards, 1310 Hemmingford Road, Moers [sic], NY 12958.

⁹ *Id.* at 1.

¹⁰ Letter dated April 21, 2004 from W. Riley Hollingsworth, Special Counsel, Spectrum Enforcement Division, Enforcement Bureau to Frank C. Richards, 1310 Hemmingford Road, Moers [sic], NY 12958.

¹¹ See Letter dated June 23, 2004 from Frank C. Richards to W. Riley Hollingsworth.

¹² See Letter dated July 6, 2004 from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau to Frank C. Richards, 1310 Hemmingford Road, Moers [sic], NY 12958.

¹³ See FCC File No. 0002666016 (filed June 28, 2006).

¹⁴ See Letter dated May 15, 2006 from Frank C. Richards to Riley Hollingsworth, Special Counsel. The letter stated that Frank Richards (NY) had lived in motels in Florida for approximately six months during the 1970s; had held Technician and General Class licenses; and moved from Maryland to New York in May 1994.

¹⁵ See Letter dated July 14, 2006 from W. Riley Hollingsworth, Special Counsel, Enforcement Bureau to Frank C. Richards, 1310 Hemmingford Road, Mooers, NY 12958.

honesty and probity of its licensees in a regulatory system that is largely self-policing.”¹⁶ As the Commission recently stated, “Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.”¹⁷ Misrepresentation is “a false statement of fact made with intent to deceive.”¹⁸ Lack of candor is “concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.”¹⁹ Intent to deceive is established if a licensee knowingly makes a false statement,²⁰ and can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive.²¹ The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.²²

8. The attempt of Frank Richards (NY) to change the address and other information for Call Sign KB4VU, and his subsequent cancellation of the license in lieu of responding to EB’s inquiries regarding the renewal/modification application, raise substantial and material questions of fact as to whether he made false certifications, misrepresented facts to the Commission, and/or demonstrated a lack of candor in order to claim the identity and operating privileges of Frank Richards (FL). In the application, Frank Richards (NY) certified that all of the statements therein were true, complete, correct, and made in good faith, even though his filing appears to have satisfied none of these standards.

9. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity.²³ The record suggests that Frank Richards (NY) has engaged in false certification, misrepresentation and lack of candor in order to assume the identity of Frank Richards (FL) for Commission licensing purposes. The circumstances presented herein raise substantial and material questions of fact as to whether Frank Richards (NY) will “deal truthfully with the Commission and ... comply with [the Commission’s] rules and policies,”²⁴ and thus whether he is qualified to be a Commission licensee.

¹⁶ See *Commercial Radio Service, Inc., Order to Show Cause*, 21 FCC Rcd 9983, 9986 ¶ 12 (2006) (*CRS Order*) (citing, e.g., *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000)) (*Contemporary Media*)).

¹⁷ *CRS Order*, 21 FCC Rcd at 9986 ¶ 12 (citing Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Report, Order, and Policy Statement*, 102 F.C.C. 2d 1179, 1210-11 ¶ 60 (1986) (*1986 Character Policy Statement*)).

¹⁸ *Id.* at 9986 ¶ 12 (citing *Fox River Broadcasting, Inc., Order*, 93 F.C.C. 2d 127, 129 (1983) (*Fox River Order*)). A false certification may also constitute a misrepresentation. *Id.* at 9986 n.15 (citing *San Francisco Unified School District, Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, 19 FCC Rcd 13326, 13334 ¶ 19 nn.40-41 (2004)).

¹⁹ *Id.* at 9986 ¶ 12. An applicant has a duty to be candid with all facts and information before the Commission, regardless of whether that information was elicited. See *Fox River Order*, 93 F.C.C. 2d at 129 ¶ 6.

²⁰ *CRS Order*, 21 FCC Rcd at 9986 ¶ 12 (citing *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)).

²¹ *Id.* at 9986 ¶ 12 (citing *American International Development, Inc., Memorandum Opinion and Order*, 86 F.C.C. 2d 808, 816 n.39 (1981), *aff’d sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983)).

²² *Contemporary Media*, 214 F.3d at 196.

²³ 47 U.S.C. § 309(e).

²⁴ Policy Regarding Character Qualifications in Broadcast Licensing, *Policy Statement and Order*, 5 FCC Rcd. 3252, 3252 ¶ 3 (1990) (citing *1986 Character Policy Statement*, 102 F.C.C. 2d at 1190-1191), *recon. granted in part*, 6 FCC Rcd 3448 (1991).

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order*, upon the following issues:

- a) To determine whether Frank C. Richards made false certifications, misrepresentations to, and/or lacked candor before, the Commission in applications and/or responses to Commission inquiries.
- b) To determine the effect of Frank C. Richards' representations of fact to, and candor before, the Commission on his qualifications to be licensed by the Commission.
- c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether Frank C. Richards is qualified to be a Commission licensee.
- d) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Frank C. Richards should be granted.

11. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), in order to avail himself of the opportunity to be heard, Frank C. Richards, in person or by his attorney, SHALL FILE with the Commission, within twenty calendar days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

12. IT IS FURTHER ORDERED that, pursuant to Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), if Frank C. Richards fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

13. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

14. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on Frank C. Richards.

15. IT IS FURTHER ORDERED that a copy of this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED in the Federal Register.

16. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau